

**Renewable Energy Question #32: How has Michigan or other jurisdictions designed their renewable standards to adapt to unforeseen circumstances, or proposed to do so? What methods beyond legislative changes have been considered or implemented?**

While legislative changes are always available as a means of adapting RES policies to unforeseen circumstances, most states incorporate relatively broad provisions in their existing RES policies that will relieve electric providers of RES requirements under various conditions, including the catch all “force majeure” clause. Please refer to the Union of Concerned Scientists’ Renewable Electricity Standards Toolkit for a comprehensive discussion of these various “escape clauses.” (See references list below)

In the case of Michigan, an electric provider may petition the MPSC for up to two extensions of the 2015 10% renewable electricity standard. The extensions will be granted if the MPSC determines there is good cause for such. If two extensions of the 2015 RES deadline have been granted to an electric provider, upon subsequent petition by the electric provider at least three months before the expiration of the second extended deadline, the PSC shall, after consideration of prior extension requests and for good cause, establish a revised RES attainable by the electric provider. In addition, an electric provider that makes a good faith effort to spend the full amount of incremental costs of compliance as outlined in its approved renewable energy plan and that complies with its approved plan, subject to any approved extensions or revisions, shall be considered to be in compliance.

“Good cause” includes, but is not limited to, the electric provider’s inability, as determined by the PSC, to meet the RES because of a renewable energy system feasibility limitation including, but not limited to, any of the following: (a) renewable energy system site requirements, zoning, siting, land use issues, permits, or any other necessary governmental approvals that effectively limit availability of renewable energy systems, if the electric provider exercised reasonable diligence in attempting to secure the necessary governmental approvals; (b) equipment cost or availability issues including electrical equipment or renewable energy system component shortages or high costs that effectively limit availability of renewable energy systems; (c) cost, availability, or time requirements for electric transmission and interconnection; (d) projected or actual unfavorable electric system reliability or operational impacts; (e) labor shortages that effectively limit availability of renewable energy systems; (f) an order of a court of competent jurisdiction that effectively limits the availability of renewable energy systems.

Twenty-six of the 29 states with RES requirements include some forbearance clause in the policy language. Some become applicable only when the costs of compliance exceed a certain threshold. However, most contain additional discretion for the state PUC to delay compliance requirements if they cannot reasonably be met or failure to comply by an electric provider was due to events beyond its reasonable control. These “force majeure” clauses often leave significant discretion for state PUCs to delay compliance or forgive noncompliance in the event of unforeseen circumstances.

In addition, several states include specific authority for a state PUC to delay or forgive compliance if (1) reliability will be impacted in a negative way; (2) if siting and permitting of renewable energy systems

cannot be reasonably secured; (3) if an electric provider is facing financial hardship regardless of its renewable energy requirements; (4) if transmission constraints hinder delivery of service; or (5) if complying with the renewable energy requirement would force an electricity provider to acquire electricity in excess of its projected load in a compliance year.

Nearly all of these attempts to provide relief in the face of unforeseen circumstances provide some level of discretion to the state PUC to determine that (1) the electric provider seeking relief is acting in good faith to meet RES requirements; and (2) that circumstances beyond the reasonable control of the electric provider are the driving cause of noncompliance. None of them require legislative action to implement. However, in the rare case that these provisions do not provide adequate protections from unforeseen circumstances, legislative action would still be available if necessary.

Resources:

1) Union of Concerned Scientists. 2013. *Renewable Electricity Standards Toolkit*. Online at: [http://go.ucsusa.org/cgi-bin/RES/state\\_standards\\_search.pl?states=All&category3=&category7=&category8=&category32=&category39=&category43=49&category51=&submit43.x=6&submit43.y=3](http://go.ucsusa.org/cgi-bin/RES/state_standards_search.pl?states=All&category3=&category7=&category8=&category32=&category39=&category43=49&category51=&submit43.x=6&submit43.y=3), accessed April 5, 2013